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### FAX COVER SHEET

### PLEASE DELIVER THIS FACSIMILE TO EXAMINER MOHAMMAD ALI

TO: Assistant Commissioner for Patents  
Attn: Examiner Mohammad Ali  
Group Art Unit 2177  
Patent Examining Corps  
Facsimile Center  
Washington, D.C. 20231

FROM: David W. Victor

OUR REF: 0018.0059  
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Title of Document Transmitted: INFORMAL COMMUNICATION: PROPOSED  
AGENDA FOR INTERVIEW

Applicant: T.W. Bish et al.  
Serial No.: 09/436,506  
Filed: November 9, 1999  
Group Art Unit: 2177  
Docket No.: TU999036

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on  
November 15, 2002

By:   
Name: David W. Victor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	T.W. Bish et al.	Examiner:	Mohammad Ali
Serial No.:	09/436,506	Group Art Unit:	2177
Filed:	November 9, 1999	Docket No.:	TU999036
TITLE:	METHOD, SYSTEM, AND PROGRAM FOR ACCESSING DATA FROM STORAGE SYSTEMS		

**CERTIFICATE UNDER 37 CFR 1.8:**

I hereby certify that this correspondence is transmitted via facsimile to 703-746-5652 on November 15, 2002.

David W. Victor

**INFORMAL COMMUNICATION -****DO NOT ENTER INTO PROSECUTION RECORD:****PROPOSED AGENDA FOR INTERVIEW**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

The Examiner phoned the attorney for Applicants the other day requesting that the Applicants fax over a proposed agenda for a phone interview, which is scheduled for Monday, November 18, 2002 at 11:00AM (EST).

Applicants want to discuss the cited Le (U.S. Patent No. 6,272,605) and Frank (U.S. Patent No. 5,251,308) references and why they do not teach or suggest the claim requirements that each of two storage devices maintain a flag indicating whether a previous access attempt of the storage device failed and selecting the storage device having the flag indicating that a previous access attempt did not fail if the flag for the other device indicates that a failure occurred.

Applicants want to address the focus of the cited Le that teaches away from the claim requirements concerning selecting one of two storage devices for data access because the cited Le is not concerned with selecting between one of two devices having the same copy of data, but

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Serial No. 09/436,506  
Docket No. TU999036  
Firm No. 0018.0059

instead discusses a technique for handling an attempted recall when the tape is busy with another recall.

Applicants further want to discuss why the sections of Le and Frank the Examiner cited in the October 24, 2002 Advisory Action also fail to teach the claim requirements concerning maintaining a flag for each of two storage devices indicating whether an access attempt failed and then selecting the storage device whose flag indicates that no previous attempt failed if the other storage device flag indicates that an access attempt failed.

The Examiner did not cite in the Final Office Action the secondary reference Frank as teaching the above two claim requirements. Because Frank is not cited to overcome the above discussed deficiencies of Le, Applicants want to discuss why independent claims 1, 10, and 19 are patentable over the cited combination of Le and Frank because such combination does not teach or suggest the above discussed claim requirements.

Applicants note that the Examiner has not addressed Applicants rebuttal with respect to dependent claims 2, 4-9, 11, 13-18, 20, and 22-27. For this reason, Applicants cannot ascertain the grounds on which the Examiner disputes the Applicants remarks and traversal of the rejection. Accordingly, Applicants believe it would be helpful to discuss the Examiner's grounds for rejection of these claims to determine best how to proceed at this point.

Dated: November 15, 2002

By: 

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